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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re K.R., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

A.R.,

Defendant and Appellant;

H.R.,

Movant and Respondent.

D068303

(Super. Ct. No. NJ14628)

APPEAL from an order of the Superior Court of San Diego County, Sharon
Kalemkiarian, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Senior Deputy County Counsel, for Plaintiff and Respondent.

Beth Ploesch, under appointment by the Court of Appeal, for Minor.

McGlinn & McGlinn and Ryan M. McGlinn, for Movant and Respondent.

A.R. appeals the juvenile court order terminating her parental rights to her minor daughter, K.R., under Welfare and Institutions Code section 366.26.¹ A.R. contends the court erred by finding the beneficial parent-child relationship exception to adoption did not apply to preclude termination of her rights. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

In April 2012, one-year-old K.R. was taken into protective custody by the San Diego County Health and Human Services Agency (the Agency) after A.R. was arrested for robbing K.R.'s paternal grandparents' home. Harry R., K.R.'s father and A.R.'s husband, was arrested shortly after for the same crime.² K.R., A.R. and Harry lived in a manufactured home on the paternal grandparents' property. At the time of their arrests, A.R. and Harry were also suspects in another criminal case involving the theft of appliances from bank owned homes. After A.R. and Harry were arrested, the paternal grandfather discovered drugs and drug paraphernalia within K.R.'s reach in the family's home.

¹ All statutory references are to the Welfare and Institutions Code.

² Harry's parental rights to K.R. were also terminated. Harry has not appealed.

K.R. was initially detained at Polinsky Children's Center. While there she tested positive for methamphetamine. Two days later K.R. was placed with the paternal grandparents. At the jurisdiction and disposition hearing, the juvenile court took jurisdiction, finding A.R. and Harry were unable to care for K.R. because of their use of methamphetamine and heroin. The court ordered K.R.'s continued placement with the paternal grandparents and reunification services for both parents. The paternal grandparents, who cared for K.R. regularly before the dependency proceeding, obtained de facto parent status before the six-month review hearing.

At the review hearing, the Agency recommended terminating reunification services to both parents. During the review period A.R. had been released from jail after her initial arrest, but at the time of the hearing was again incarcerated and awaiting trial on several felony charges. She admitted long term substance abuse of methamphetamine, heroin and marijuana. Harry was incarcerated for the majority of the review period and, although he recently sought drug treatment, he had not made substantial progress in his reunification efforts. At the hearing, the court terminated reunification services for A.R., but continued services for Harry.

In the subsequent review period, both parents improved. Harry continued to actively engage in services and in its report for the 12-month review hearing, the Agency recommended continued reunification services and unsupervised visitation for him. A.R. was released from custody and moved into a residential drug treatment program. Even though her services were terminated, A.R. had regular negative drug tests and completed parenting courses. As a result of A.R.'s efforts, at the 12-month review hearing in May

2013, the juvenile court granted her section 388 petition requesting reinstatement of reunification services. The court also ordered another six months of reunification services for Harry. K.R., just over age two at the time of the hearing, was doing well in the care of her paternal grandparents.

In July 2013, Harry filed a section 388 petition contending the paternal grandfather was interfering with visitation and reunification efforts. In the petition, Harry sought an order removing K.R. from the paternal grandparents and placing her in a home where his reunification efforts would be supported. The Agency agreed with Harry that the paternal grandparents were thwarting his ability to reunify with K.R. and filed a report recommending K.R. be removed from their home. The Agency also recommended K.R. be placed with A.R. on the condition A.R. reside with the maternal grandmother. The family's social worker reported both parents were progressing in their reunification efforts and both had completed drug treatment programs. The social worker also reported at length about her concern that the paternal grandfather was interfering with both parents' visitation and flatly refusing to facilitate visitation for Harry.

In September 2013, K.R. began a 60-day trial visit with A.R. in the maternal grandmother's home. The visit was successful and in its report for the 18-month review hearing the Agency recommended K.R. be placed with A.R. with ongoing family maintenance services and that Harry be permitted overnight contact at the family's home. The court agreed with the Agency's recommendations and ordered K.R. placed with A.R. By the end of January 2014, however, events took a negative turn and Harry was again incarcerated, this time for violating probation by failing to appear at an arraignment on a

new methamphetamine possession charge. By the time set for the next family maintenance review hearing in April 2014, A.R. had also been arrested for driving under the influence (DUI) and with a suspended license after hitting two parked cars. At the time of her arrest, A.R. reported to the arresting officer that she had last used methamphetamine in January 2014.

A.R. was formally charged with DUI and other related misdemeanors in May 2014. In June 2014 the paternal grandparents filed a section 388 modification petition seeking to have K.R. returned to their care. The petition attached correspondence from Harry, in which he claimed that he and A.R. had regularly used spice, a drug they knew would not be detected in testing, since gaining custody of K.R. in September 2013 and later methamphetamine. Harry's letter alleged once they started abusing methamphetamine A.R. collected urine from another family member and submitted it as her own to avoid detection. Harry also stated that while K.R. was living with A.R., A.R. was involved in several incidents of domestic violence with the maternal grandmother. In its report for the hearing on the paternal grandparents' petition, the Agency expressed concern about A.R.'s recent arrest and Harry's allegations, but continued to recommend K.R. remain in A.R.'s care. A.R. denied Harry's allegations and questioned Harry's motives because she had recently filed for divorce.

On October 7, 2014, the court denied the paternal grandparents' petition and ordered K.R. remain in A.R.'s care on the condition she continue to live in the home of

the maternal grandmother.³ One week later, however, the Agency filed a petition under section 387 alleging A.R. was no longer able to provide adequate care for K.R. The petition stated A.R. tested positive for methamphetamine on October 1, 2014, and had been sentenced to 365 days in custody beginning on November 3, 2014. As a result, K.R. had been placed with her paternal aunt, Winnie S., and Winnie's husband. On December 19, 2014, after a contested hearing, the juvenile court sustained the allegations of the section 387 petition, removed K.R. from A.R.'s custody, terminated reunification services for the parents and scheduled a hearing under section 366.26 to select and implement a permanent plan for K.R.⁴

In its initial report for the permanency planning hearing, filed in April 2015, the Agency recommended the court terminate parental rights and order a permanent plan of adoption for K.R. K.R. was thriving in her placement with Winnie, and Winnie and her husband were committed to adopting K.R. K.R.'s Court Appointed Special Advocate (CASA) reported K.R. had a strong attachment to Winnie and her husband and that they were attentive to K.R.'s needs. The Agency reported that since A.R.'s incarceration in

³ In the same timeframe, A.R. filed a petition for modification seeking to terminate the de facto parent status of the paternal grandparents. A.R. alleged the paternal grandparents had conducted "a coordinated campaign against reunification" On October 24, 2014, the court denied A.R.'s petition. A.R. appealed the order and this court affirmed (case No. D067038).

⁴ A.R. sought review of the order under California Rules of Court, rule 8.452. This court dismissed the petition after A.R.'s counsel determined there were no viable issues.

November 2014, K.R. and A.R. had four visits.⁵ The Agency's social workers reported the visits were difficult. K.R. had to be persuaded to attend and was often distraught afterward. K.R. was also disinterested in talking to A.R. on the phone during this period.

In a supplemental report filed in May, a few weeks before the hearing, the Agency confirmed its recommendation that parental rights be terminated. Winnie and her husband had completed their adoptive home study and were awaiting the Agency's final approval to adopt K.R. A.R. was released from custody in April 2015 and had since visited K.R. four times.⁶ A.R. was appropriate and loving towards K.R. during the visits. K.R. was reserved when the visits began and warmed up to A.R. as their time together progressed. When the visits ended K.R. had no difficulty transitioning and left A.R. without hesitation. After one visit, Winnie reported to the Agency that K.R. told Winnie "she doesn't want to leave" and asked fearfully if she would have to go back with A.R.

At the permanency planning hearing, the juvenile court received into evidence the Agency's reports and the CASA's report. The court heard testimony from A.R. and the social worker currently assigned to the family. The social worker testified A.R. was able to meet K.R.'s needs during their visits, but that she did not share a parent-child relationship with K.R. K.R. did not initiate affection towards A.R. and did not have difficulty leaving A.R. when the visits ended. After the presentation of evidence, A.R.'s counsel asserted in closing argument that the beneficial parent-child relationship

⁵ Visitation was scheduled for once every other week but because A.R. violated jail rules, she was prohibited from having visitation for several weeks.

⁶ A.R. also filed a section 388 petition shortly after her release seeking to have K.R. returned to her care, which the court summarily denied.

exception to adoption applied. Harry's counsel argued Harry's relationship with K.R. also fit the beneficial parent-child relationship exception to adoption, but Harry did not want K.R. removed from her current placement and instead advocated for a guardianship.

After considering the evidence and counsel's arguments, the juvenile court found by clear and convincing evidence that K.R. was likely to be adopted and none of the exceptions to adoption applied. The court terminated parental rights and referred K.R. for adoptive placement.

DISCUSSION

A.R. contends the juvenile court erred by finding the beneficial parent-child relationship exception to adoption did not apply. She asserts she and K.R. share a substantial and positive emotional attachment and that she occupies a parental role in K.R.'s life. A.R. argues the evidence showed the benefits of her continuing a parental relationship with K.R. outweighed the benefit K.R. would gain in a permanent home with new, adoptive parents.

A

After reunification services are terminated, the focus of a dependency proceeding shifts from preserving the family to promoting the best interests of the child, including the child's interest in a stable, permanent placement that allows the caregiver to make a full emotional commitment to the child. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.) At the permanency planning hearing, the court has three options: (1) terminate parental rights and order adoption as the permanent plan; (2) appoint a legal guardian for the child; or (3) order the child placed in long-term foster care. (*Ibid.*)

"Adoption, where possible, is the permanent plan preferred by the Legislature."
(*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 (*Autumn H.*.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of the specified statutory exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) "The parent has the burden of establishing the existence of any circumstance that constitutes an exception to termination of parental rights." (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) Because a selection and implementation hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." Courts have interpreted the phrase " 'benefit from continuing the . . . relationship' " to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would

confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord, *In re Jason J.* (2009) 175 Cal.App.4th 922, 936.)

The parent asserting the exception will not meet his or her burden by showing the existence of a "friendly and loving relationship," an emotional bond with the parent, or pleasant, even frequent, visits. (*In re J.C.* (2014) 226 Cal.App.4th 503, 529; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418–1419; *In re L.S.* (2014) 230 Cal.App.4th 1183, 1200 ["To avoid termination of parental rights, it is not enough to show that a parent-child bond exists"].) There must be a parental role in the child's life, resulting in a significant, positive emotional attachment from the child to parent that if severed would result in harm to the child. (*In re C.F.*, *supra*, at p. 555; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324; see also *In re J.C.*, *supra*, at p. 529 [observing that interaction between a natural parent and child will always confer some incidental benefit to the child and for the exception to apply, " 'a parental relationship is necessary' "].)

"We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)

B

Though noting it was a close decision because of A.R.'s incarceration, the juvenile court found A.R. had maintained regular visitation with K.R. as required under section 366.26, subdivision (c)(1)(B)(i). The court concluded, however, A.R. had not shown K.R. had such a significant, positive emotional attachment to her that severing the relationship would result in great harm to K.R. The record supports this finding. In support of her argument that the evidence showed K.R. was strongly bonded to her, A.R. points to the Agency's reports at the time K.R. was placed in her care under a plan of family maintenance, before K.R. was removed from her care the second time.

The Agency's reports from this earlier time period do indicate K.R. was bonded to A.R. By the time of the permanency planning hearing, however, K.R. had been out of A.R.'s care for eight months. During that time, K.R. bonded to Winnie and her husband, and looked to them to meet her needs. Though K.R.'s interactions with A.R. were generally positive after A.R.'s release, the evidence does not support A.R.'s assertion that she and K.R. shared such a strong bond that severing it would be detrimental to K.R. To the contrary, K.R. expressed fear about leaving Winnie's home and living with A.R. Further, when the visits with A.R. ended K.R. had no difficulty transitioning. She left A.R. without hesitation and was happy to return to Winnie.

At the time of the permanency planning hearing, there was no evidence that K.R. was negatively affected by A.R.'s absence. "A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of

visitation with the parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) By the time of the hearing, K.R. was a happy, healthy four-year-old and was thriving in the home of her aunt and uncle, who were strongly committed to adopting her and meeting her medical, developmental and emotional needs. The court was entitled to accept this evidence and the social worker's opinion that the benefits of adoption outweighed the benefits of maintaining a relationship with A.R. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 191 [child's interest in stable and permanent home is paramount once a parent's interest in reunification is no longer at issue].)

K.R.'s needs could not be met by A.R. By the time of the permanency planning hearing K.R. had been removed from A.R.'s care twice, and had endured over three years as a dependent of the juvenile court and four different placements in that time. K.R. deserved to have her custody status resolved and her placement made permanent and secure. Substantial evidence supported the juvenile court's finding that A.R. and K.R. did not share a substantial bond and the court did not abuse its discretion by finding termination of A.R.'s parental rights was in K.R.'s best interest.

DISPOSITION

The order is affirmed.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

IRION, J.